

Remarks

The application has been reviewed in light of the Official Action mailed April 11, 2006. Claim 7 is amended. Claims 1-6 are cancelled. Claims 7-29 are pending in the application.

No new matter is introduced by the amendments.

Applicant acknowledges that the Examiner considers Claims 26-28 to contain allowable subject matter.

The Examiner objected to the Abstract for containing the phraseology "means." Applicant submits the attached replacement Abstract to address this objection.

The Examiner objected to an informality in paragraph [000100] of the specification. Applicant submits a replacement paragraph [000100] to correct this informality.

The Examiner rejected claims 7-29 under 35 U.S.C. §112 as being indefinite for not identifying "how the particulate material is fed into/out of the apparatus and it is unclear how the apparatus is particularly suited or functions to treat the particulate material because there is no treating structure recited in the body of the claim." Applicant respectfully traverses this rejection. The fact that the claims do not recite structure directed to the manner in which "particulate material is fed into/out of the apparatus" means that such elements are not a limitation on the claims. "Breadth of a claim is not to be equated with indefiniteness." MPEP § 2173.04; In re Miller, 169 USPQ 597 (CCPA 1971). The fact that the claimed invention could introduce or remove particulate material in a variety of manners does not mean that the claimed invention is indefinite. In fact, such a rejection is governed by 35 U.S.C. §112 first paragraph and not second paragraph. "A rejection of a claim under 35 U.S.C. 112 as broader than the enabling disclosure is a first paragraph enablement rejection and not a second paragraph definiteness rejection. Claims are not rejected as broader than the enabling disclosure under 35 U.S.C. 112 for noninclusion of limitations dealing with factors which must be presumed to be within the level of ordinary skill in the art; the

claims need not recite such factors where one of ordinary skill in the art to whom the specification and claims are directed would consider them obvious.” MPEP §2164.08; *In re Skrivan*, 427 F.2d 801, 806, 166 USPQ 85, 88 (CCPA 1970). Applicant submits that apparatuses for treating a particulate material are known in the art, as is evidenced by the references identified in Applicant’s Information Disclosure Statement and Supplemental Information Disclosure Statement. These references identify structures for introducing and removing particulate materials. Applicant submits that one skilled in the art for treating particulate materials could apply the claimed invention to known structures for introducing and removing particulate materials. Thus, the fact that the preamble of claim 7 utilizes the phrase “treating a particulate material” does not mean that claim is indefinite because other elements may be necessary to accomplish a treating function. As a result, Applicant respectfully submits that claims 7-29 are not overly broad for lack of enablement.

The Examiner rejected claims 7-20, 23-25 and 29 under 35 U.S.C. 102(b) as being anticipated by Huettlin, WO00/10699 (“WO ‘699”). The Examiner rejected claims 21 and 22 under 35 U.S.C. 103(a) as being unpatentable over ‘699 in view of Huettlin, DE 10104184 (“DE ‘184”). Applicant respectfully requests that the Examiner reconsider this rejection in light of the fact that all claims require “a deflection element adjoining said wall in an upper region of said container”; “at least a first air gap in a transition region from said wall to said deflection element; and an air feed device for feeding an air stream through said at least one first air gap into said container[.]”

Applicant notes that WO ‘699 is the publication of PCT Application No. PCT/EP99/05423. U.S. Application No. 09/792,844 is a continuation of PCT Application No. PCT/EP99/05423 and is Published as US 2001/0016224 (“Pub ‘624”). Applicant has referenced Pub ‘624 for the purpose of identifying the elements disclosed in WO ‘699.

WO ‘699 discloses a container 24 with a bottom 26 and an upstanding wall 28. (Pub ‘624 par [0098]). The container 24 has an upper edge 42 of the wall

28 “drawn in and radially inwardly curved.” (Pub ‘624 par [0103]). “The upper edge 42 of wall 28 is fixedly connected to an annular guide element 44 in the form of a plate configured as a collar, which is spaced radially inwardly from the wall in the upper region of the wall 28.” (Pub ‘624 par [0104]). “A conical element 48 is also arranged in the container 24 which is fixedly connected to the upper portion of the housing by four carrier plates 50 disposed about the circumference.” (Pub ‘624 par [0106]). “The conical element 48 is open to the top and comprises a return surface 52 for the material 12.” (Pub ‘624 par [0107]). Process air is introduced through “supplying means 66 include a supplying channel 68 which opens below the bottom 26 of the container 24. The process air is introduced from the outside through the housing 14, where the flow direction is illustrated in FIG. 1 by wide arrows 70.” (Pub ‘624 par [0112]).

The Examiner has identified upstanding wall 28 as “an upright wall”; upper edge 42 as “a deflection element”; “a transition region between the wall [28], and an inclined return surface (52) toward the deflection means [42]” as “at least a first air gap in a transition region from said wall to said deflection element”; and supplying means 66 as “an air feed device.”

Applicant submits that WO ‘699 does not anticipate the claimed invention because the supplying means 66 introduces process air into container 24 through the bottom 26 of the container 24 and not through “at least a first air gap in a transition region from said wall to said deflection element[.]” As can be seen by the arrows 70 in Fig. 1 of WO ‘699, process air is introduced through the bottom 26 of container 24 and then generally in an upward direction. To the extent that process air flows through the “transition region between the wall [28], and an inclined return surface (52) toward the deflection means [42]” such process air is already in container 24. As a result, WO ‘699 does not disclose an apparatus that includes “an air feed device for feeding an air stream through said at least one first air gap into said container[.]” Further, WO ‘699 does not anticipate the claimed invention because it does not disclose “a deflection element adjoining said wall in an upper region of said container” and “at least a first air gap in a

transition region from said wall to said deflection element." As noted above, container 24 has an upper edge 42 of the wall 28 "drawn in and radially inwardly curved." Fig. 1 shows that the transition from upper edge 42 to wall 28 is a contiguous and solid wall transition. WO '699 does not depict an air gap formed between upper edge 42 and wall 28. The gap as identified by the Examiner is formed within container 24 and in the space between upper edge 42 and return surface 52. This identified gap is not formed in the portion of container 24 between upstanding wall 28 and upper edge 42. Thus, WO '699 does not disclose "a deflection element adjoining said wall in an upper region of said container" and "at least a first air gap in a transition region from said wall to said deflection element."

Based on the foregoing, Applicant respectfully submits that WO '699 does not anticipate the claimed invention.

Applicant also notes that the claimed invention is not anticipated by DE '184. DE '184 discloses an embodiment in which process air is introduced through the top of container 26 or through the bottom. Further, the deflection elements formed in the upper regions of container 26 do not have an air gap formed between these elements and the adjoining walls. As a result, DE '184 does not disclose "a deflection element adjoining said wall in an upper region of said container"; "at least a first air gap in a transition region from said wall to said deflection element; and an air feed device for feeding an air stream through said at least one first air gap into said container[.]"

Additionally, Applicant also notes that an alternative rejection under 35 U.S.C. § 103 would also be improper, because the claimed invention is not rendered obvious by WO '699 or DE '184. In order for the claimed invention to be obvious over the prior art, there must be some suggestion or motivation in the cited references to modify or combine the references in accordance with the claimed invention. See, e.g., *In re Mills*, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990). The claimed invention is not obvious in light of WO '699 or DE '184. As noted above, both references fail to disclose "a deflection ele-

ment adjoining said wall in an upper region of said container"; "at least a first air gap in a transition region from said wall to said deflection element; and an air feed device for feeding an air stream through said at least one first air gap into said container[.]" Since neither reference teaches these limitations one skilled in the art would be not motivated to modify the references in accordance with the claimed invention. Further, any combination of these references would still lack these limitations.

Neither reference discloses or remotely suggests that "at least a first air gap in a transition region from said wall to said deflection element; and an air feed device for feeding an air stream through said at least one first air gap into said container[.]" As noted before, WO '699 discloses an apparatus in which process air is introduced through the bottom 26 of container 24 and then generally in an upward direction. Process air is not fed into the container through an air gap between upper edge 42 and wall 28. DE '184 discloses an embodiment in which process air is introduced through the top of container 26 or through the bottom. Since both references fail to disclose "at least a first air gap in a transition region from said wall to said deflection element; and an air feed device for feeding an air stream through said at least one first air gap into said container[.]", one skilled in the art would not be motivated to modify the references in accordance with the claimed invention.

Neither reference discloses or remotely suggests "a deflection element adjoining said wall in an upper region of said container" and "at least a first air gap in a transition region from said wall to said deflection element." Fig. 1 of WO '699 shows that the transition from upper edge 42 to wall 28 is a contiguous and solid wall transition. WO '699 does not depict an air gap formed between upper edge 42 and wall 28. The deflection elements in DE '184, formed in the upper regions of container 26, do not have an air gap formed between these elements and the adjoining walls. Since both references fail to disclose "a deflection element adjoining said wall in an upper region of said container" and "at least a first air gap in a transition region from said wall to said deflection element", one skilled

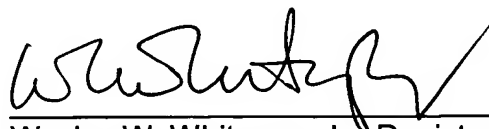
in the art would not be motivated to modify the references in accordance with the claimed invention.

Since neither reference discloses or provides any motivation to modify the references to include "a deflection element adjoining said wall in an upper region of said container"; "at least a first air gap in a transition region from said wall to said deflection element; and an air feed device for feeding an air stream through said at least one first air gap into said container", any combination of these references would still lack these limitations. Applying WO '699 to DE '184 would result in process air being introduced through the bottom of the container and a solid wall transition from the upstanding wall 28 to the upper deflection surface. Applying DE '184 to WO '699 would result in process air being introduced through the top and bottom of the container and a continuous transition from the side wall to the upper deflection element. The combination of these references would not result in "a deflection element adjoining said wall in an upper region of said container"; "at least a first air gap in a transition region from said wall to said deflection element; and an air feed device for feeding an air stream through said at least one first air gap into said container[.]"

In view of the foregoing remarks, it is respectfully submitted that all of the claims currently pending in the application are in condition for allowance. Reconsideration and notice to that effect is earnestly requested.

Respectfully submitted,

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